

LBNL – PROCUREMENT STANDARD PRACTICES

Section: 28 Bonds and Insurance

Subject: 28.2 Insurance and Indemnification

PURPOSE: This standard practice (SP) establishes the procedures for requiring insurance and indemnification in Laboratory subcontracts.

POLICY: The Laboratory will require subcontractors to insure and indemnify the University as necessary to protect the University from significant risks.

SCOPE: This SP applies to all subcontracts in which the nature of the work involves the potential for significant risk to the Laboratory.

DEFINITIONS:

Additional Insured An additional insured is an individual or entity that is not automatically included as an insured under the policy of another, but for whom the named insured's policy provides a certain degree of protection.

Certificate of Insurance A certificate of insurance is a form used as evidence of insurance by listing the coverage provided by specific insurance policies. Certificates of insurance are issued for information only, do not confer rights upon certificate holders, and do not amend, extend or alter the coverage provided by the insurance policies listed on the certificate.

Claims-Made Form Policy A claims-made form policy is an insurance policy under which a written claim may only be made during the policy period or any specifically stated extended reporting period, but not afterwards.

Commercial General Liability Insurance Commercial general liability insurance is insurance covering the legal obligation of the insured resulting from bodily injury or property damage to third parties.

Designated Commercial Services List The *Designated Commercial Services List* is a list of subcontracted services determined by Procurement, the Laboratory Risk Manager, and Legal Counsel to be of such low risk that insurance for the activity is not required when performed in a Non-Hazard Work Area and the subcontracted service is less than \$10,000. The *Designated Commercial Services List* is located on the Procurement Home Page and is provided as Exhibit 28.2.a.

Endorsement An endorsement is an additional part of the insurance policy, not a part of the original insurance policy, which amends the original policy's terms and conditions. When attached to the original insurance policy, an endorsement becomes a legal part of that policy. An endorsement is also called a Rider.

Excess Liability Excess liability insurance is insurance to cover losses above the

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primary policy limits, with losses below that amount usually covered by the primary policy.

General Aggregate

General aggregate is the maximum limit of liability payable by an insurance policy for all covered losses sustained during a specified period of time, usually one year.

Indemnification

An indemnification is an agreement by a contracting party to hold the other party harmless, to secure the other party against loss or damage, or to give security for the reimbursement of the other party in case of an anticipated loss.

Insurance Risk Factors

Insurance risk factors are factors present in the subcontracted activity such as location, congestion of work site, labor time, presence of LBNL supervisor or worker, and risk of accidental loss or injury. A list of insurance risk factors and limits are provided in Exhibit 28.2.b, *Insurance Risk Factors*. If the subcontracted activity meets any of the risk factors listed, appropriate insurance provisions must be included in the service subcontract, unless otherwise exempted by the LBNL Risk Manager.

Non-Hazard Work Area

A Non-Hazard Work Area is a work location determined by the Laboratory Risk Manager to have no greater than common industrial hazards present (e.g., office environment, machine shop environment, assembly area). Excluded from the definition are those activities performed in nuclear, radiological or hazardous facilities, or facilities that generate airborne hazards or pollutants.

Occurrence

An occurrence is an event, including continuous or repeated exposure to conditions, which results in bodily injury or property damage neither expected nor intended from the standpoint of the insured.

**Products/
Completed
Operations Liability**

Product liability insurance is insurance that covers bodily injury or property damage incurred by a merchant or manufacturer as a consequence of some defect in the product sold or manufactured. Completed operations liability insurance is insurance that covers a contractor's improperly performed work discovered after the work has been completed.

**Professional
Liability Insurance**

Professional liability insurance is insurance to cover actual or * alleged professional misconduct, or departure from the ordinary standard of care in the performance of a professional service.

Rider

See "Endorsement" above.

Risk

Risk is the assumption of possible monetary loss or gain in view

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of the job or work to be done.

Umbrella Policy

An umbrella policy is insurance that protects against claims in excess of the limits of the primary policy, or against claims not covered by that policy. It generally provides coverage broader than an excess liability policy. Details of the broader coverage vary from policy to policy.

Waiver of Subrogation

Waiver of subrogation is an agreement by a subcontractor's insurance company to surrender its right to seek reimbursement from the University for a claim the subcontractor's insurance company has already paid.

PROCEDURES:

Application of Requirements

The following insurance requirements must be applied to subcontracts for services.

No Insurance Required

Insurance is not required for any of the following service subcontracts:

- Intra University Transactions (IUTs),
- DOE M&O Contractor Orders,
- Memorandums of Understanding with other Government Agencies,
- Services determined to be of such low risk that they are included on the *Designated Commercial Services List* (see Exhibit 28.2a), are less than \$10,000, and are performed only in a Non-Hazard Work Area;
- When any factor on the *Insurance Risk Factors* list is present and the Risk Manager has provided a written statement to exempt the insurance.

No Certificate Needed

Appropriate insurance provisions must be included in subcontracts, but verification of the subcontractor's insurance compliance (e.g., certificates of insurance, endorsements) is not required for the following:

- Services on the *Designated Commercial Services List* (see Exhibit 28.2a) when the subcontracted service is greater than \$10,000 and is performed only in a Non-Hazard Work Area, or
- Any other repair, maintenance, or calibration performed on

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unmodified products only by the manufacturer, or manufacturer-trained or authorized personnel in a Non-Hazard Work Area.

Insurance Verification Required

All other service subcontracted activities performed on-site and not falling in the criteria listed above are to have insurance provisions in the subcontract, with the procurement specialist verifying the subcontractor's compliance by obtaining an insurance certification and endorsement when required.

Insurance and Indemnification Clauses

Procurement specialists must ensure that appropriate Insurance and Indemnification clauses are included in subcontracts when required. Further, when modifying a subcontract, the procurement specialists must ensure that the Insurance and Indemnification clauses included in the subcontract are appropriate for the modification. Unless otherwise excluded above, the following types of procurement actions require the inclusion of Insurance and Indemnification clauses. These clauses are in LBNL's subcontract templates.

- Architect-Engineer (A-E) and other Professional Services
- Charter of Commercial Aircraft Services
- Charter of Commercial Public Carrier Ground Services
- Construction Services
- Health Care Services
- Supplemental Labor Services

Special Insurance and Indemnification Situations

The following sections include information about how to handle special insurance and indemnification situations. At the end is a list of situations requiring the procurement specialist to consult with the Laboratory Risk Manager.

Lower-Tier Subcontractors

Whenever a subcontract requires that a subcontractor provide evidence of insurance to the Laboratory, that subcontractor is likewise required to obtain satisfactory evidence of insurance from lower-tier subcontractors (other than vendors of commercial items and supplies), consistent with the types and amounts required for the subcontractor itself. Procurement specialists, at their discretion, may require subcontractors to provide the Laboratory with evidence of lower-tier subcontractor insurance.

Subcontractor Use of Government Vehicles

If a subcontract involves the use of a government vehicle by subcontractor personnel, the automobile liability insurance shall additionally cover the risk of loss, destruction, or damage to the

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government vehicle in accordance with the following guidelines:

The additional loss, destruction, and damage insurance is required:

- When a government vehicle is assigned for exclusive, full-time use on or off site, and
- When a government vehicle is made available for occasional use, on or off site involving hazardous activities or materials.

The additional loss, destruction, and damage insurance is not required:

- When a government vehicle is made available for occasional use on or off site involving non-hazardous activities or materials and
- For supplemental labor subcontracts, regardless of whether a government vehicle is assigned for occasional or exclusive full-time use, or whether it is used on or off site.

University Furnished Government Property

Special insurance and/or indemnification clauses are not required to cover the subcontractor's use of government furnished property against loss or damage. However, if the subcontractor's use of the government furnished property is potentially hazardous (e.g. involves machine tools, lasers, cranes, pressure vessels, high voltage or high temperature equipment, or radioactive materials) the procurement specialist shall consult with the Laboratory Risk Manager to establish appropriate types and levels of insurance.

Nuclear Hazards Indemnity

Prime Contract Clause I.74 (*DEAR 952.250-70, Nuclear Hazards Indemnity Agreement*) provides that the *Nuclear Hazards Indemnity Agreement* clause must be included in any subcontract that may involve the risk of public liability (as defined in the Atomic Energy Act of 1954, as amended, and paragraph (d)(2) of the clause) unless the subcontractor is provided protection through the Nuclear Regulatory Commission.

No subcontractor may be indemnified for other than nuclear hazards unless prior approval is obtained from DOE and The Regents of the University.

Laboratory Counsel must be consulted on any request by a subcontractor to be indemnified for any reason, including nuclear hazards.

Situations Requiring

Procurement specialists shall consult the Laboratory Risk Manager regarding insurance and indemnification issues

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Consultation with the Laboratory Risk Manager

whenever:

- A subcontractor is unable or unwilling to provide the amount of insurance required by the Laboratory;
- The insurance company and/or its agent/broker is unable or unwilling to provide certificates or endorsements of insurance that meet all of the subcontract requirements;
- The procurement specialist questions whether the type(s) and amount(s) of insurance required for a particular subcontract are sufficient because of:
 - A special nature of the risks associated with the proposed work,
 - A known potential for accident,
 - A known exposure to loss by the Laboratory (in terms of personnel, property, or downtime), or
 - Past experience with the subcontractor, etc.;
- A subcontractor claims to be self-insured;
- An insurance policy is written on a claims-made form; or
- A subcontractor's use of government furnished property is potentially hazardous.

Procurement will consult with the Laboratory Risk Manager from time to time to review the types and levels of insurance required for all standard insurance and indemnification clauses.

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Certificates and Endorsements of Insurance

Certificates of insurance are required only when verification of the subcontractor's insurance is required. However, procurement specialists, at their discretion, may require subcontractors to provide the Laboratory with certificates of insurance to provide evidence of satisfactory types and levels of insurance.

When insurance certificates and endorsements are required, and before allowing any work requiring insurance to begin, the procurement specialist is responsible for requesting them from the subcontractor in a timely manner and ensuring that they are current, accurate, and include all insurance types, levels, and other requirements of the subcontract's insurance provisions.

Reviewing Certificates and Endorsements of Insurance for Acceptability

The procurement specialist shall review all Certificates of Insurance and all required endorsements in accordance with the following instructions.

Certificates

The procurement specialist shall review all Certificates of Insurance to determine whether the subcontractor's insurance adequately fulfills the subcontract requirements. The following is a list of questions that may be used in this review process:

Insured's Name:

- Is the name of the insured the same as the legal name of the subcontracting party?

Types of Insurance:

- Are all types of insurance required by the subcontract clause listed on the Certificate(s) of Insurance?
- If any insurance is written on a claims-made form, has the Laboratory Risk Manager been consulted as to the adequacy of the insurance?

Insurance Limits:

- Are the limits for all types of insurance at or above the minimum limits required by the subcontract clause?
- If the minimum liability insurance limits required by the subcontract are met through the use of an umbrella or excess liability policy, are all of the requirements pertaining to the base liability insurance addressed for the umbrella or excess liability policy?

Description of Operations:

- Is all information in this section of the insurance certificate

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consistent with the terms and conditions of the subcontract?
Any information that is unclear or imposes special requirements should be questioned.

- This section of the insurance certificate may be used to show The Regents and the U.S. Government as additional insureds, when required.

Policy Effective Date:

- Is this date prior to, or coincidental with, the start date established for the work that requires insurance?

Policy Expiration Date:

- For occurrence form policies: Is this date on or after the completion or expiration date of the subcontract?
- For claims-made form policies: If the Laboratory Risk Manager has approved the claims-made form policy, does the coverage survive for a period of not less than three years following the completion or expiration date of the subcontract, and does coverage provide for a retroactive date of placement prior to or coinciding with the effective date of the subcontract, or as otherwise required by the Laboratory Risk Manager?
- If a policy will expire prior to the subcontract's anticipated expiration or completion date, the Certificate Administrator and the procurement specialist must ensure that the subcontractor provides a satisfactory replacement Certificate of Insurance at least 30 days prior to the policy's expiration date.

Policy Cancellation:

- Does each Certificate of Insurance expressly state that the insurer will give 30 days advance written notice of any change, modification or cancellation for all policies listed on the certificate? Certificate forms often have a similar provision pre-printed on them, but that text needs to be modified by crossing-out some words so as to leave a statement similar to the following: "Should any of the above described policies be cancelled before the expiration date thereof, the issuing insurer shall mail 30 days advance written notice to the named certificate holder."

Certificate Holder:

- Is the certificate holder named as The Regents of the University of California and U.S. Government? (Note: naming The Regents and the U.S. Government as the certificate holder does not mean that the University or the Government are named as additional insureds.)

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Authorized Representative:

- Has the agent/broker signed the Certificate of Insurance? Some brokers use rubber stamped signatures which should be questioned since it is not immediately certain that the appropriate person approved the certificate.

Additional Insured Status:

- When required, does the Certificate of Insurance indicate that The Regents of the University of California and the U.S. Government (not the University or the Lawrence Berkeley National Laboratory [LBNL]) are named additional insureds under the general liability insurance policy, including commercial general liability, umbrella, or excess liability insurance policies?

Waiver of Subrogation:

When required, does the Certificate of Insurance indicate that a waiver of subrogation in favor of the University and the U.S. Government exists for the general liability insurance policy, including commercial general liability, umbrella, or excess liability insurance policies?

To expedite obtaining corrected certificates of insurance, the procurement specialist may work directly with the insurance agent/broker as long as he/she has obtained the subcontractor's permission to do so.

Endorsements

The procurement specialist shall review the required endorsement to determine whether the subcontractor's insurance policy has been appropriately modified to fulfill the subcontract requirements. The following questions may be used in this review process:

- Does the endorsement to the general liability insurance policy name The Regents of the University of California and the U.S. Government (not University or LBNL) as additional insureds as required?
- If the general liability policy limits fall short of the LBNL insurance requirements, but the limits of the umbrella or excess liability policy meet or exceed the LBNL liability insurance limits, have similar endorsements for the umbrella or excess liability policy been received and reviewed for acceptability along with the endorsements for the general liability policy? In this instance, the procurement specialist shall consult with the Laboratory Risk Manager to ensure that the terms of the umbrella or excess policy are consistent with those of the primary policy.

To expedite obtaining corrected endorsements, the procurement

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specialist may work directly with the insurance agent/broker as long as he/she has obtained the subcontractor's permission to do so.

Filing of Certificates and Endorsements of Insurance

After the certificates and endorsements of insurance have been reviewed and found acceptable, the procurement specialist shall place a copy of each certificate and endorsement in the subcontract file.

Verifying and Updating Certificates and Endorsements of Insurance

The procurement specialist is responsible for ensuring, as needed, that the subcontractor's insurance is adequate and effective for the duration of the subcontract. Updated certificates of insurance or endorsements must be reviewed for compliance with the insurance requirements of the subcontract and filed in the subcontract file.

REVIEWS/ APPROVALS:

Laboratory Counsel

Laboratory Counsel should be consulted on any request for a special subcontract provision from a subcontractor to be indemnified for any reason, including nuclear hazards.

The Regents of the University

The Regents of the University must review and approve any request by a subcontractor to be indemnified for other than nuclear hazards. This must be done before sending the request to DOE.

DOE

DOE must review and approve any request by a subcontractor to be indemnified for other than nuclear hazards.

RESPONSIBILITIES:

Procurement Specialist

The procurement specialist shall:

- Consult with the Laboratory Risk Manager whenever any of the situations listed under Risk Manager Responsibilities arise (see below);
- Ensure that, when required, certificates and endorsements of insurance are received, reviewed, and found to be acceptable before allowing any work requiring insurance to begin, including:
 - Requesting certificates and endorsements from the subcontractor and ensuring that subcontractors are clear on what the Laboratory requires,
 - Reviewing the certificates and endorsements from the subcontractor to determine if they comply with the subcontract requirements,

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- Working with the insurance agent/broker to obtain corrected information, if necessary.
- Maintain a copy of all current, accepted certificates and endorsements of insurance in the subcontract file;
- Consult with Laboratory Counsel whenever a subcontractor requests to be indemnified for any reason, including nuclear hazards; and
- Verify, update, and maintain certificates and endorsements of insurance, as needed.

Laboratory Risk Manager

The Laboratory Risk Manager is responsible for providing assistance to the procurement specialist whenever:

- A subcontractor is unable or unwilling to provide the type(s) or amount(s) of insurance required by the Laboratory;
- The insurance company and/or its agent/broker is unable or unwilling to provide certificates or endorsements of insurance that meet all of the subcontract requirements;
- The procurement specialist questions whether the amount of insurance required for a particular requirement is sufficient;
- A subcontractor claims to be self-insured;
- One or more insurance policies are written on a claims-made form; and
- A subcontractor's use of government furnished property is potentially hazardous.

REFERENCES:

Prime Contract Clause I.74 - Nuclear Hazards Indemnity Agreement

Prime Contract Clause 1.98 – Insurance – Litigation and Claims

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Exhibit: 28.2.a Designated Commercial Services List

Designated Commercial Services List

The following is a list of those services assigned the classification of Designated Commercial Services.

1. Calibrations and repairs of analytical equipment that does **not** include:
 - Use of toxic materials
 - Use of gases
 - Use of radioactive materials
 - Use of Class 3 or Class 4 laser or microwave sources greater than 10 mW/cm²
2. Computer repair or installation of small desktop workstations
3. Copy machine repair, installation, or maintenance
4. Database services
5. Furniture assembly that does **not** include:
 - Mounting to walls, unless approved in writing by the Risk Manager
 - Use of flammable adhesives or glues
 - Moving of heavy furniture
6. Photographic equipment repair or maintenance
7. Refrigeration repair or maintenance if no torch or hot work is required that does **not** include:
 - Work on chillers or on roofs
8. Small office equipment repair or maintenance
9. Software maintenance
10. Interpreting services
11. Laundry pick-up service that does **not** include:
 - Articles with toxic or radioactive contamination
12. Non-hazardous garbage pick-up
13. Parcel delivery services

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Exhibit: 28.2.a Designated Commercial Services List

14. Training, if no industrial or chemical hands-on activity is required
15. Translating services
16. Water delivery service
17. Installation, repair, and maintenance of household-like appliances and equipment that does **not** include:
 - Use of flammable adhesives and glue
 - Mounting to walls, unless approved in writing by the Risk Manager

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Insurance Risk Factors

If any of the following risk factors are present, unless otherwise exempted by the LBNL Risk Manager, the service subcontract must include appropriate insurance requirements.

<u>Factors</u>	<u>Limit</u>
Location	Any area having other than General Industrial Hazards
Congestion of Work Site	When co-located activities may interfere with the safe completion of work
Labor Time	Where more than 24 on-site work hours are required to perform the task
Lab Supervision of Worker	Where a Lab employee manages or controls the subcontractor employee's work
Risk of Accidental Loss or Injury	An activity that, if not reasonably managed, poses a reasonable possibility of bodily injury, environmental impact, property damage, or legal liability